

Message Text

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TAGS: EIND, EMIN, CI

SUBJECT: COMPENSATION AGREEMENT FOR NATIONALIZED ANACONDA PROPERTIES

REF: SANTIAGO 4356

PASS OPIC AND EXIMBANK

SUMMARY

NEGOTIATIONS BETWEEN GOC AND ANACONDA TERMINATED IN TRANSACTION CONTRACT SIGNED JULY 22 AND GIVEN FORCE OF LAW THROUGH DECREE LAW NO. 601 PUBLISHED IN JULY 23 ISSUE OF DIARIO OFICIAL. UNDER TERMS OF AGREEMENT CODELCO IS ALBLIGED TO FULFILL PAYMENT FOR PERVIOUS PURCHASES 51 PERCENT OF ANACONDA PROPERTIES. AS COMPENSATION FOR REMAINING 49 PERCENT, CHILE EXPLORATION COMPANY WAS AWARDED CASH PAYMENT OF US\$44,390,000 AND ANDES COPPER MINING COMPANY US \$14,959,000, NET OF ALL OUTSTANDING CLAIMS AND TAXES. END SUMMARY.

THE FOLLOWING IS AN INFORMAL EMBASSY TRANSLATION OF THE DECREE LAW:
DECREE LAW NO. 601 - SANTIAGO, JULY 23, 1974.

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IN VIEW OF THE STIPULATIONS OF DECREE LAWS NOS. 1 AND 128

OF 1973 AND 527 OF 1974, AND

WHEREAS:

1. TRANSITORY STIPULATION NO. 17 OF THE POLITICAL CONSTITUTION OF THE STATE, APPROVED BY THE CONSTITUTIONAL REFORM LAW NO. 17450 OF JULY 16, 1971, DECREED THE NATIONALIZATION OF THE GRAN MINERIA COPPER ENTERPRISES AND THE COMPANIA MINERA ANDINA AND ESTABLISHED GUIDELINES AND PROCEDURES TO DETERMINE THE AMOUNT OF COMPENSATION TO BE PAID FOR SAID NATIONALIZATION;

2. ON THE DATE OF NATIONALIZATION THE CHUQUICAMATA ARE BODY WAS EXPLOITED BY THE MIXED MINING ENTERPRISE "COMPANIA DE COBRE CHUQUICAMATA S.A.", AND THE EL SALVADOR MINE BY THE MIXED MINING ENTERPRISE "COMPANIA DE COBRE SALVADOR S.A.", IN WHICH THE COPPER CORPORATION (CODELCO) HAD A 51 0/0 OWNERSHIP THROUGH THE PURCHASE OF SHARES, WITH THE REMAINING 49 0/0 BELONGING TO BE FOREIGN CORPORATIONS "CHILE EXPLORATION COMPANY" AND "ANDES COPPER MINING COMPANY,", RESPECTIVELY, BOTH CORPORATIONS BEING SUBSIDIARIES OF "THE ANACONDA COMPANY". THE PURCHASE PRICE OF THE AFOREMENTIONED 51 0/0 WAS US\$140,494,800 FOR THE SHARE OF "COMPANIA DE COBRE CHUQUICAMATA S.A." AND US\$34,091,970 FOR THE SHARES OF "COMPANIA DE COBRE SALVADOR S.A.". CODELCO AND THE MIXED MINING ENTERPRISES WERE ALSO LINKED WITH THE TWO FOREIGN CORPORATIONS MENTIONED THROUGH A PURCHASE CONTRACT FOR THE REMAINING 49 0/0 OF THE SHARES, AS WELL AS BY OTHER AGREEMENTS RELATING TO THE ADMINISTRATION AND EXPLOITATION OF THE ENTERPRISES;

3. ON THE DATE OF NATIONALIZATION, VARIOUS TAX ISSUES EXISTED OR AROSE SUBSEQUENTLY AFFECTING BOTH THE MIXED ENTERPRISES AND THEIR PREDECESSORS;

4. THE IMPLEMENTATION OF THE CONSTITUTIONAL STIPULATION ON NATIONALIZATION AKAUSED NUMEROUS CONFLICTING ISSUES BETWEEN THE CHILEAN STATE, CODELCO, "CHILE EXPLORATION COMPANY", "ANDES COPPER MINING COMPANY" AND "THE ANACONDA COMPANY," VARIOUS LAWSUITS BEING PURSUED BOTH IN CHILE AND ABROAD;

5. THE SITUATION SUMMARIZED ABOVE PROMPED THE PREVIOUS GOVERNMENT TO CARRY OUT NEGOTIATIONS WITH NO POSITIVE RESULTS;
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6. THE PRESENT GOVERNMENT OF THE REPUBLIC, BEING CONSCIOUS OF THE NEGATIVE CONSEQUENCES OF THESE CONFLICTS ON NATIONAL INTERESTS, RESOLVED TO CARRY OUT DIRECT NEGOTIATIONS WITH THE FOREIGN ENTERPRISES INVOLVED;

7. THESE NEGOTIATIONS WERE CARRIED OUT WITH THE MAXIMUM ATTENTION AND SPEED, AND AN AD REERENDUM AGREEMENT HAS BEEN

REACHED BETWEEN THE CHILEAN STATE, CODELCO, "CHILE EXPLORATION COMPANY", "ANDES COPPER MINING COMPANY" AND "THE ANACONDA COMPANY" CONSISTING OF THE TRANSACTION CONTRACT SIGNED ON JULY 22, 1974 WHICH HAS BEEN DEPOSITED WITH THE CONTROLLER GENERAL OF THE REPUBLIC;

8. THE GOVERNMENT JUNTA HAS STUDIED THE TRANSACTION CONTRACT AND CONSIDERS IT IS IN THE NATIONAL INTEREST TO GIVE ITS APPROVAL, SINCE:

A) THE COMPENSATION THEREIN DETERMINED IN FAVOR OF THE PARTNERS IN THE NATIONALIZED ENTERPRISES HAVE BEEN ESTABLISHED IN ACCORDANCE WITH THE BASIC PRINCIPLES OF THE POLITICAL CONSTITUTION OF THE STATE AND, AT THE SAME TIME, TAKING INTO CONSIDERATION THE FINANCIAL POSSIBILITIES OF THE COUNTRY;

B) THE BASE FIGURES HAVE BEEN DETERMINED ON THE BOOK VALUE OF THE ENTERPRISES AT DECEMBER 31, 1970, WITH THE PERTINENT DEDUCTIONS AND IMPUTATIONS, ARRIVING AT THE AGREED AMOUNT;

C) CODELCO IS AWARDED A COMPENSATION EQUIVALENT TO ITS 51 0/0 IN THE NATIONALIZED ENTERPRISES AND, AS A CONSEQUENCE OF THIS AMOUNT, IT IS DEFINITELY ESTABLISHED THAT THIS AGENCY MUST FULFILL ITS OBLIGATIONS ARISING FROM THE PURCHASE OF 51 0/0 OF THE SHARES IN THE AFOREMENTIONED MINING ENTERPRISES, TO BE EFFECTED IN THE FORM AND IN ACCORDANCE WITH NEW TERMS AND CONDITIONS MOST FAVORABLE TO CODELCO, AS AGREED IN THE TRANSACTION.

D) AS COMPENSATION FOR 49 0/0 OF THE RIGHTS IN THE TWO AFOREMENTIONED MIXED MINING ENTERPRISES PREVIOUSLY HELD BY FOREIGN CORPORATIONS, THE AMOUNT OF US\$44,390,000 IS AWARDED TO "CHILE EXPLORATION COMPANY" AND US \$14,959,000 TO, "ANDES COPPER MINING COMPANY," THESE UNCLASSIFIED

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AMOUNTS BEING EQUIVALENT TO COMPENSATIONS ESTABLISHED ON JANUARY 1, 1971, INCLUDING THE INCREMENT CORRESPONDING TO THE TIME ELAPSED BETWEEN THAT DATE AND JUNE 30, 1974. THESE COMPENSATIONS WILL BE PAID IN CASH BY THE STATE OF CHILE;

E) ALL PENDING LAWSUITS ARE TERMINATED, ALL EVENTUAL LAWSUITS ARE ELIMINATED, AND ALL FISCAL CREDITS FOR TAXATION ARE LIQUIDATED THE LATTER BEING DEFINITELY DETERMINED IN THE TRANSACTION SINCE THEY WERE TAKEN INTO ACCOUNT IN THE CALCULATION OF THE COMPENSATIONS REFERRED TO IN THE PRECEDING PARAGRAPHS;

F) ALL OBSTACLES AND DIFFICULTIES EXISTING FOR THE FREE OPERATION OF THE NATIONALIZED ENTERPRISES PRESENTLY BELONGING TO THE STATE COLLECTIVE ENTERPRISES "COMANIA DE COBRE

CHUQUICAMATA" AND "COMPANIA DE COBRE SALVADOR", ARE
THEREFORE ELIMINATED, AND

G) THE REMAINING CLAUSES OF THE REFERRED
CONTRACT ARE ALSO OBVIOUSLY ADVANTAGEOUS TO NATIONAL INTERESTS.

9. CONSIDERING THE NATURE OF THE AGREEMENTS CONTAINED IN
THE TRANSACTION CONTRACT, THE GOVERNMENT JUNTA CONSIDERS
IT NECESSARY TO APPROVE IT AS A CONSTITUTIONAL NORM OF A
TRANSITORY CHARACTER, WITH NO LEGAL ADMINISTRATIVE DISPOSITIONS
TO HINDER ITS IMPLEMENTATION, AND THROUGH THIS DECREE LAW,
BY VIRTUE OF THE CONSTITUTIVE POWERS IT ASSUMED ON
SEPTEMBER 11, 1973, IT APPROVES ALL THE TERMS OF THE
TRANSACTION CONTRACT MENTIONED IN PARAGRAPH 7.

THE GOVERNMENT JUNTA HAS APPROVED AND ENACTS THE
FOLLOWING DECREE LAW:

THE FOLLOWING TRANSITORY DISPOSITION IS
ADDED TO THE POLITICAL CONSTITUTION OF THE STATE:

"TRANSITORY ARTICLE NINETEEN:

THE TRANSACTION CONTRACT CONCLUDED BETWEEN THE STATE OF
CHILE, CODELCO, "CHILE EXPLORATION COMPANYGSZN ZANDES COPPER
MINING COMPANY" AND "THE ANACONDA COMPANY", CONSISTING
OF THE DOCUMENT SIGNED BY THE PARTIES ON JULY 22, 1974 AND
WHICH IS IN THE HANDS OF THE CONTROLLER GENERAL OF THE REPUBLIC,
IS HEREBY APPROVED IN ALL ITS TERMS. THIS CONTRACT RESOLVES AND
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ENDS ALL CONTROVERSIES, DIFFICULTIES, LAWSUITS, CLAIMS AND
OTHER DISPUTES BETWEEN THE PARTIES, PRESENT OR IN THE FUTURE,
IN CHILE AND ABROAD, ARISING FROM OR RELATED TO THE
NATIONALIZATION OF THE ENTERPRISES PREVIOUSLY BELONGING TO
THE DISSOLVED ENTERPRISES "COMPANIA DE COBRE CHUQUICAMATA
S.A." AND "COMPANIA DE COBRE SALVADOR S.A." IN COMPLIANCE
WITH THE STIPULATIONS MENTIONED IN THIS DOCUMENT.

FOR THE PURPOSE OF IMPLEMENTING THE AFOREMENTIONED TRANS-
ACTION EXISTING LIMITATIONS, RESTRICTIONS OR EXISTING REQUIREMENTS,
OR THAT MAY BE UNDERSTOOD TO BE ESTABLISHED BY LAW FOR EFFECTING
PAYMENTS, CONSTITUTE GUARANTEES, ASSUME OBLIGATIONS, SIGN THE
DOCUMENTS AND MAKE DECLARATIONS CONTAINED IN SAID CONTRACT,
WILL NOT BE APPLIED."

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